

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services amends Chapter 25, “Disability Services Management,” Iowa Administrative Code.

These amendments establish standards for mental health advocates who provide services under Iowa Code chapter 229, “Hospitalization of Persons with Mental Illness.” New Division X in Chapter 25 includes standards for definitions, appointment and qualifications, assignment, advocate and county responsibilities, data collection requirements, and quality assurance for mental health advocate services.

Prior to July 1, 2015, mental health advocates were appointed by the judicial branch and paid by the counties. 2015 Iowa Acts, House File 468, amended Iowa Code chapter 229 to make mental health advocates county employees, effective July 1, 2015. Prior to July 1, 2015, procedures varied from judicial region to judicial region and from county to county. These amendments will provide consistency in requirements for hiring the advocate and for performance standards.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 2350C** on January 6, 2016.

The Department received 46 comments from eight respondents during the public comment period. Many of the comments received by the Department were duplicative. The public comments and Department responses shown below include the five comments that resulted in changes to the amendments. A full electronic copy of the public comments and Department responses may be found on the Department’s Web site, www.dhs.iowa.gov, under the rules section.

Comment 1: Two comments from two respondents stated that the definition of “Conflict of interest” should end after the words “impartial judgment.” Two additional respondents stated that “the advocate is a professional who should be allowed to use their judgment to determine if a conflict of interest exists” and that dual relationships happen frequently when advocate services are provided.

Department response 1: The Department agrees that advocates may be unable to avoid conflicts of interest. Subrule 25.103(2) provides for a mechanism to monitor anticipated issues of conflict of interest. The Department has revised the definition of “Conflict of interest” as suggested. The definition now reads as follows:

“*Conflict of interest*’ means any activity that interferes or gives the appearance of interference with the exercise of professional discretion and impartial judgment.”

Comment 2: One respondent stated that the wording that follows the words “other treatment facility” in the definition of “County where the individual is located” should be deleted. The respondent stated that the Department’s proposed language does not address advocates who refuse to transfer and does not allow for short-term appointment prior to six months and creates increased costs and decreased responsiveness to the client.

Department response 2: The definition of “County where the individual is located” does not state that an advocate cannot request a transfer to another advocate and in another location prior to six months. Subrule 25.103(1) provides the mechanism for an advocate to request a transfer. The Department has changed the definition as suggested to provide clarity. The definition now reads as follows:

“*County where the individual is located*’ means the individual’s county of residence as defined in Iowa Code section 331.394, or if the individual has been ordered to receive treatment services under an Iowa Code chapter 229 commitment and is placed in a residential or other treatment facility.”

Comment 3: One respondent pointed out the language in proposed paragraphs 25.104(5)“b” and “c” seems redundant.

Department response 3: The Department agrees that the language in proposed paragraphs 25.104(5)“b” and “c” relating to correspondence retained in an individual’s file is redundant and, therefore, did not adopt proposed paragraph 25.104(5)“b” and has relettered the subsequent paragraphs accordingly.

Comment 4: Three comments from three respondents stated that the rules do not adequately address the issue of workforce coverage, particularly when there is only one advocate for each county or for multiple counties. Specific concerns mentioned involved staff other than an advocate performing advocate duties on a temporary basis and coverage of advocate duties while an advocate is on vacation.

Department response 4: The Department agrees and has changed the language of subrule 25.105(8) to clarify that an advocate must cover the caseload as follows:

“25.105(8) Provide advocate staff to cover the county’s caseload at all times, according to, but not limited to, each county’s unique number of individuals assigned to the advocate, travel required, types of settings where the individuals reside, services available and extended staff absences.”

Comment 5: Three comments from three respondents stated that the quality assurance section is unnecessary, intrusive or redundant as it duplicates the county’s employee evaluation process. One respondent also stated that advocate files are confidential. One respondent asked about the source of funding for quality assurance requirements.

Department response 5: Iowa Code section 229.19 requires that the rules address quality assurance measures. Quality assurance is a process that reviews the delivery of the services in the system. The performance of the individual advocate is not the subject of a quality assurance process. The Department views a quality assurance system as being separate from an employee evaluation. Any individual involved in the review of advocate files would be bound by all confidentiality laws and rules. Implementation and funding would be determined by individual counties. The Department has removed the phrase “as the employer of the advocate,” from the introductory paragraph of rule 441—25.107(229) to provide clarity. The introductory paragraph now reads as follows:

“441—25.107(229) Quality assurance system. The county shall implement a quality assurance system which:”

In addition to the changes noted above, references to 2015 Iowa Acts, House File 468, have been removed from the rules because the amendments in 2015 Iowa Acts, House File 468, are now codified in Iowa Code chapter 229.

These amendments were adopted by the Mental Health and Disability Services Commission on February 18, 2016.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 229.

These amendments will become effective May 1, 2016.

The following amendments are adopted.

ITEM 1. Reserve rules **441—25.97** to **441—25.100**.

ITEM 2. Adopt the following **new** 441—Chapter 25, division title, as follows:

DIVISION X

MENTAL HEALTH ADVOCATES

ITEM 3. Adopt the following **new** 441—Chapter 25, Division X, Preamble, as follows:

PREAMBLE

This division establishes definitions, appointment and qualifications, assignment, responsibilities of the advocate and the county, data collection requirements, and quality assurance for mental health advocate services under Iowa Code chapter 229.

ITEM 4. Adopt the following **new** rules 441—25.101(229) to 441—25.107(229):

441—25.101(229) Definitions.

“Advocate” means mental health advocate as defined in Iowa Code section 229.1.

“Conflict of interest” means any activity that interferes or gives the appearance of interference with the exercise of professional discretion and impartial judgment.

“County of residence” means the same as defined in Iowa Code section 331.394.

“*County of venue*” means the county in which the Iowa Code chapter 229 commitment was filed pursuant to Iowa Code section 229.44.

“*County where the individual is located*” means the individual’s county of residence as defined in Iowa Code section 331.394, or if the individual has been ordered to receive treatment services under an Iowa Code chapter 229 commitment and is placed in a residential or other treatment facility.

“*Individual*” means the respondent who is receiving mental health advocate services under Iowa Code chapter 229.

“*Judicial district*” means the same as defined in Iowa Code section 602.6107.

“*Mental health and disability services region*” means the same as defined in Iowa Code section 331.389.

441—25.102(229) Advocate appointment and qualifications. The board of supervisors of each county shall appoint a person to act as an advocate representing the interests of individuals involuntarily hospitalized by the court under Iowa Code chapter 229. The advocate is hired by the board of supervisors and employed by the county.

25.102(1) A person may be appointed and employed or contracted with as the advocate by one county or by multiple counties. Advocates may be appointed for counties in more than one judicial district or more than one mental health and disability services region.

25.102(2) Qualifications.

a. The advocate shall meet the following qualifications:

(1) Possess a bachelor’s degree with 30 semester hours or equivalent quarter hours in a human services field (including, but not limited to, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy) and at least one year of experience in the delivery of services to persons with mental illness; or

(2) Hold an Iowa license to practice as a registered nurse and have at least three years of experience in delivery of services to persons with mental illness.

b. A person employed as an advocate on or before July 1, 2015, who does not meet the requirements of subparagraph 25.102(2)“*a*”(1) or (2) shall be considered to meet those requirements so long as the person is continuously appointed as an advocate in the employing county.

c. A person employed as an advocate must pass criminal background, sex offender registry, and child and dependent adult abuse registry checks before hire.

441—25.103(229) Advocate assignment. The committing court shall assign the advocate from the county where the individual is located.

25.103(1) If the advocate assigned cannot serve the individual in an effective and efficient manner, the advocate may request another advocate to perform advocate duties on the individual’s behalf. In the event that another advocate can better represent the individual on a longer term basis, the advocate shall request that the court transfer the individual to another advocate.

25.103(2) When a conflict of interest is identified between an advocate and an individual, the court and the advocate’s county of employment shall be notified and an alternative advocate shall be assigned. The advocate’s direct supervisor is responsible to monitor and ensure that the advocate does not have a conflict of interest. In instances when dual or multiple relationships are unavoidable, advocates should take steps to protect individuals and are responsible for setting clear, appropriate, and culturally sensitive boundaries. Advocates who anticipate a conflict of interest among the individuals receiving services should clarify the advocate’s role with the parties involved and take appropriate action to minimize any conflict of interest.

25.103(3) When the advocate assigned is not the advocate from the individual’s county of residence, the advocate’s county of employment may seek reimbursement from the region in which the individual’s county of residence is located as outlined in Iowa Code section 229.19(1)“*b.*”

25.103(4) An advocate shall only be assigned to a child 17 years of age or under when the child is not represented by an attorney due to an existing child in need of assistance (CINA) or other juvenile court action pursuant to the Iowa Code.

441—25.104(229) Advocate responsibilities. The minimum duties of the advocate are outlined in Iowa Code section 229.19. The role of the advocate is to ensure that the rights of the individual are upheld.

25.104(1) The advocate shall be readily accessible to communication from the individual and shall initiate contact within 5 days of the individual's commitment. The advocate shall inform the individual regarding the role of the advocate.

25.104(2) The advocate shall meet the individual in person within 15 days of the individual's commitment. The advocate shall present the county grievance procedure process, in writing, to the individual. The presentation shall include the county grievance procedure and contact information and the contact information for the citizens' aide/ombudsman. The advocate shall inform the individual about the mental health crisis services that are available.

25.104(3) The advocate shall review each report submitted to the court and communicate with the individual's medical and treatment team. Advocates shall abide by all federal, state, and local confidentiality laws.

25.104(4) The advocate shall file with the court Iowa Ct. R. 12.36—Form 30, quarterly reports for each individual assigned to the advocate. The report shall state the actions taken with the individual and amount of time spent on behalf of the individual.

25.104(5) The advocate shall maintain an organized confidential and secure file for each individual served. The file shall contain but not be limited to:

- a. Copies of quarterly reports submitted to the court.
- b. Copies of correspondence sent to and received from the individual, family members, providers and others.
- c. Releases of information.
- d. Case notes describing the date, time and type of contact with the individuals or others and a brief narrative summary of the content or outcome of the contact.
- e. Documents filed with the court electronically shall be considered as part of the individual's file.

25.104(6) The advocate shall register as provided in Iowa Ct. R. 16.305(1) to participate in the court's electronic document management system and shall submit all documents to be filed with the court electronically. The documents will be stored as electronic records that are retrievable and readable through the electronic document management system.

25.104(7) The advocate, as an employee of the county, shall comply with all county policies and procedures, including but not limited to hiring, supervision, grievance procedures, and training.

25.104(8) All advocate records are the property of the county, which is responsible for the provision of confidential storage, transfer, and destruction of client files, including those maintained on electronic and digital devices, with access limited according to the county's policy on confidentiality as described in subrule 25.105(6).

25.104(9) The advocate may attend the hospitalization hearing of an individual represented by an attorney; however, payment for the advocate's attendance is at the discretion of the county of employment.

441—25.105(229) County responsibilities. As the employer of the advocate, the county shall provide qualified staff to support and facilitate the provision of quality advocate services. The county shall:

25.105(1) Assign a single supervisor, a single contract manager, or the county board of supervisors as the supervising entity to carry out responsibilities in this chapter.

25.105(2) Have a job description in the personnel file of the advocate that clearly defines the advocate's responsibilities and qualifications as defined in Iowa Code section 229.19 and in rule 441—25.104(229).

25.105(3) Have a process to verify, within 90 days of the advocate's hire, qualification of the advocate, including degrees and certifications obtained from a primary source.

25.105(4) Provide to the advocate training and education relevant to the position, including but not limited to overview of mental health diagnosis and treatment, the mental health and disability services delivery system, confidentiality, individual rights, professional conduct, the role of advocacy and service coordination within an interdisciplinary team, Iowa Code and administrative rules, and court procedures.

25.105(5) Provide approved training on child and dependent adult abuse reporter requirements.

25.105(6) Provide to any employee with access to individuals' files training on state and federal laws regarding nondisclosure and confidentiality of client protected health information during and after employment and maintain in the personnel files a signed document indicating the employee's awareness of the county's policy on confidentiality.

25.105(7) Complete criminal background, sex offender registry and child and dependent adult abuse registry checks before employment of the advocate. Any person who does not pass these checks is prohibited from being hired, or continuing to serve, as an advocate.

25.105(8) Provide advocate staff to cover the county's caseload at all times, according to, but not limited to, each county's unique number of individuals assigned to the advocate, travel required, types of settings where the individuals reside, services available and extended staff absences.

441—25.106(229) Data collection requirements.

25.106(1) Beginning in 2016 and by December 1 each year, each county shall submit to the department of human services data regarding each individual who received advocate services during the previous state fiscal year.

25.106(2) As defined in rule 441—25.41(331), the data to be submitted are as follows:

a. Basic information about the individual, including a unique identifier and county of residence.
b. Demographic information, including the individual's date of birth, sex, ethnicity, education, and diagnosis made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association (APA).

c. Commitment information, including the date of the individual's initial commitment, type of commitment order, whether a juvenile or adult case, date of commitment and name of treatment facility the individual is committed to, any subsequent changes in treatment facility, and date commitment is terminated.

441—25.107(229) Quality assurance system. The county shall implement a quality assurance system which:

1. Annually measures and assesses advocates' activities and services.
2. Gathers feedback from stakeholders including individuals using advocate services, family members, court staff, service provider staff, and regional staff regarding advocate services.
3. Implements an internal review of individual records.
4. Identifies areas in need of improvement.
5. Develops a plan to address the areas in need of improvement.
6. Implements the plan and documents the results.

ITEM 5. Adopt the following **new** implementation sentence for 441—Chapter 25, Division X: These rules are intended to implement Iowa Code chapter 229.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/16/16.